

Message

---

**From:** Gavin, Quinn [Gavin.Quinn@epa.gov]  
**Sent:** 5/12/2021 3:02:49 PM  
**To:** Jacobs, Robin [Jacobs.Robin@epa.gov]; Aranda, Amber [aranda.amber@epa.gov]; Arrington, Linda [Arrington.Linda@epa.gov]; Muhammad, Maryam K. [Muhammad.Maryam@epa.gov]; Javier, Julie [Javier.Julie@epa.gov]; Bartow, Susan [Bartow.Susan@epa.gov]  
**Subject:** RE: Enforcement of FIFRA's Treated Articles Exemption against treated articles imported from China  
**Attachments:** 20210504\_Briefing\_treated\_seed\_petition\_clean.docx

Hello Robin,

It was great meeting with you today. Attached is the draft of the briefing we have put together in PRD. If you have any questions please let me know.

Best,  
Quinn

---

**From:** Jacobs, Robin <Jacobs.Robin@epa.gov>  
**Sent:** Wednesday, May 12, 2021 10:57 AM  
**To:** Aranda, Amber <aranda.amber@epa.gov>; Gavin, Quinn <Gavin.Quinn@epa.gov>; Arrington, Linda <Arrington.Linda@epa.gov>; Muhammad, Maryam K. <Muhammad.Maryam@epa.gov>; Javier, Julie <Javier.Julie@epa.gov>; Bartow, Susan <Bartow.Susan@epa.gov>  
**Subject:** FW: Enforcement of FIFRA's Treated Articles Exemption against treated articles imported from China

Robin L. Jacobs (she/her/hers)  
Attorney Advisor  
Waste and Chemical Enforcement Division  
Office of Civil Enforcement/ U.S. EPA  
1200 Pennsylvania Ave., N.W.  
Mailcode 3204A  
Washington, D.C. 20460  
Phone: (202) 564-2176

This email, along with any attachments, may contain information that is privileged, confidential, and/or exempt from disclosure. If you believe you have received this email in error, please notify the sender immediately, delete the email from your computer and do not copy or disclose it to anyone else.

---

**From:** Teter, Royan <Teter.Royan@epa.gov>  
**Sent:** Monday, March 29, 2021 10:19 AM  
**To:** Jacobs, Robin <Jacobs.Robin@epa.gov>  
**Subject:** FW: Enforcement of FIFRA's Treated Articles Exemption against treated articles imported from China

Robin – this is the incoming correspondence to which we need to respond.

---

**From:** Saenz, Diana <Saenz.Diana@epa.gov>  
**Sent:** Monday, March 15, 2021 5:15 PM  
**To:** Bellot, Michael <Bellot.Michael@epa.gov>; Teter, Royan <Teter.Royan@epa.gov>  
**Subject:** FW: Enforcement of FIFRA's Treated Articles Exemption against treated articles imported from China

Let's discuss this tomorrow morning during PTEB. Does the

**Deliberative Process / Ex. 5**

**Deliberative Process / Ex. 5**

---

**From:** Boucher, Michael [MBoucher@crowell.com](mailto:MBoucher@crowell.com)>

**Sent:** Monday, March 15, 2021 1:13 PM

**To:** Pease, Anita <[Pease.Anita@epa.gov](mailto:Pease.Anita@epa.gov)>; Kelley, Rosemarie <[Kelley.Rosemarie@epa.gov](mailto:Kelley.Rosemarie@epa.gov)>; Saenz, Diana <[Saenz.Diana@epa.gov](mailto:Saenz.Diana@epa.gov)>

**Cc:** MacLeay, Nina <[NMacleay@crowell.com](mailto:NMacleay@crowell.com)>

**Subject:** Enforcement of FIFRA's Treated Articles Exemption against treated articles imported from China

Dear Mses. Pease, Kelley, and Saenz:

At the end of February 2021, EPA Region 9 denied a U.S. client's import shipment into the Port of Los Angeles from China. The shipment contained treated articles manufactured in China. EPA Region 9 denied the import shipment primarily because the Chinese-made treated articles did not contain only EPA-registered pesticide products, as required by FIFRA's Treated Articles Exemption (TAE), codified at [40 C.F.R. § 152.25\(a\)](#).

Whether EPA enforces section 152.25(a) literally against imported treated articles manufactured in China is my general question. Specifically, I respectfully request an explanation from EPA Headquarters of whether EPA Region 9 has correctly stated the Agency's national interpretation of how FIFRA's TAE applies to treated articles manufactured in China and then imported into the USA for sale and use here, i.e., that all Chinese manufacturers must use only EPA-registered end-use products (EPs) to manufacture treated articles in China, if any U.S. importer wants to import the treated articles into the USA under FIFRA's TAE.

If EPA Headquarters confirms that EPA Region 9 has correctly stated how FIFRA's TAE applies to treated articles manufactured in China and then imported into the USA for sale and use here, I respectfully request an additional explanation of what evidence is acceptable to EPA nationally as proof that the Chinese manufacturer has used an EPA-registered EP to manufacture its treated article in China. EPA Region 9 has suggested that a U.S. importer may need to produce a photograph of the EP being used by the Chinese manufacturer in China, showing the EPA-approved FIFRA label that is on or attached to the EP's container. I question whether any U.S. importer can produce this the evidence in practice. China is a sovereign nation with its own pesticide control laws. Thus, I question whether China's own "FIFRA" allows the importation, sale, or use of EPA-/FIFRA-labeled pesticide products by anyone in China. In this regard, I understand that China is a member of the OECD. Perhaps EPA's/OPP's representative to the OECD has the answer to the question whether anyone can import an EPA-/FIFRA-label EP for sale and use in China or whether any EPA-/FIFRA-labeled EP would have to be relabeled as a Chinese-registered product prior to importation, sale, and use in China.

The attached November 2020 email correspondence between Ms. Pease and Erin Tesch of TSG Consulting (attached file name = Attachment E.pdf) addresses the same issue – treated articles manufactured in China and then imported into the USA – but the correspondence discusses the possibility of a different result, which Ms. Tesch apparently learned about from another pesticide industry attorney, Seth Goldberg at Steptoe & Johnson. The different result suggested is that OECA may enforce the TAE against Chinese-made treated articles by requiring them to bear or contain only active ingredients contained in EPA-registered EPs, as distinct from EPA-registered EPs themselves. The attached correspondence indicates that OPP and/or OECA may

recognize that Chinese treated article manufacturers will use EPs that are authorized under China's own "FIFRA" and may not have access to EPA-/FIFRA-labeled EPs, as a matter of Chinese law.

Health Canada's (HC's) Pest Management Regulatory Agency (PMRA) recognizes this problem and has proposed a new treated article exemption policy in Canada that tries to align Canadian law with FIFRA but that also treats treated articles manufactured in Canada differently from imported treated articles, i.e., those made outside of Canada and then imported into Canada. Coincidentally, Canada's current approach to imported treated articles is the one discussed in the attached correspondence: HC/PMRA will permit the importation of a treated article into Canada without a registration if the treated article contains only active substances that HC/PMRA has registered for preservative use in Canada, as distinct from HC/PMRA-registered EPs:

**For imported articles treated with antimicrobial preservative(s), the end-use product used to treat the article (in the foreign jurisdiction) does not require registration in Canada, but that end-use product must contain an active ingredient(s) that is (are) also registered under the *Pest Control Products Act* in Canada for that same use and the articles must be treated within the range of rates approved in Canada.**

(Emphasis added.) Thus, in Canada, there is no requirement for a Chinese-made treated article to use an HC/PMRA-registered EP in China.

EPA Region 9 told me that they have contacted OECA and confirmed that OECA does not excuse Chinese-made treated articles from the requirement to contain only EPA-registered EPs. Given the potential difficulty of complying with this requirement and the importance of this issue to many of our clients, I respectfully request an explanation from EPA Headquarters of how FIFRA's TAE applies to treated articles manufactured in China and then imported into the USA for sale and use here, specifically, whether all Chinese manufacturers must use only EPA-registered EPs to manufacture treated articles in China, if any U.S. importer will later import the treated articles into the USA under FIFRA's TAE. If the answer to this question is yes, I also respectfully request a further explanation of what evidence suffices nationally to prove that a Chinese manufacturer has used an EPA-registered EP in China to manufacture a treated article that will be imported into the USA under FIFRA's TAE.

I appreciate your consideration of my requests, invite any questions about this message, and look forward to a reply at your earliest convenience. Thank you!

Regards,

Michael Boucher

**Michael Boucher**

Direct: 1.202.624.2787 | Mobile: 1.202.306.1645

**crowell**  **moring**

Crowell & Moring LLP | [www.crowell.com](http://www.crowell.com)

1001 Pennsylvania Avenue NW

Washington DC 20004-2595

**COVID-19 Questions or Concerns? See [Crowell & Moring's COVID-19 Resource Center](#)**